

choice. Many tenants did not want to switch and upon delaying the transition, were informed by the landlord that "failure to comply would constitute a breach of [the] Lease Agreement."<sup>65</sup> The tenant is being forced to switch carriers effectively denying any semblance of choice.

5. One ALTS member cites a litany of barriers in accessing MTEs. The CLEC notes that building owners have: (1) prevented a tenant who occupies several floors in an office building to get service, until the CLEC signs a contract for that entire building and the building owner's other properties, as well, (2) demanded substantial equity in the form of "penny" warrants, (3) required CLEC lease payments be based on total space in the building as opposed to the space occupied, (4) required lease payments based on all the buildings owned, even when the CLEC is not interested in other buildings, (5) required very large one-time, up-front payments, based on floor space of all the buildings in addition to lease payments and a percentage of revenue.
6. Several building owners with a financial interest in a particular service provider informed Edge Connections that they could not grant Edge access to their buildings due to a year-long blackout period imposed by their agreement with the existing carrier. These agreements guarantee preferential treatment to the existing carrier while keeping facilities-based competitors out of the building, and eliminating consumer choice for up to one year.<sup>66</sup>

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<sup>65</sup> SBPP Letter to FCC Chairman & Commissioners, *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket 99-217 (5 September 2000), [http://www.buildingconnections.org/pages/pdf\\_files/FCC\\_let9\\_5\\_00.pdf](http://www.buildingconnections.org/pages/pdf_files/FCC_let9_5_00.pdf)

<sup>66</sup> Ibid.

## **Appendix C**

### *Barriers to Competition: Municipalities*

1. The city of Chicago plans to "give its proposed "CivicNet" telecommunications company substantial advantages that would not be available to other, privately-owned companies, including... access to city owned fiber and exclusive or preferred access to city rights of way and the rights of way of private companies required by contracts with the city to provide such access to the city."<sup>67</sup>
2. "In a new take on Internet taxation, Utah and other states plan to charge access fees to companies laying cable for Internet and other telecommunications services along interstate highways. Utah's Rights of Way Task Force earlier this year recommended a one-time \$500-per-mile charge for telecom firms installing cable along right-of-way strips bordering interstates. But Utah governor Michael Leavitt has rejected the recommendation and has publicly suggested an annual fee of \$1,000 per mile. Still, some observers in Utah say fees under consideration run as high as \$250,000 per mile."<sup>68</sup>
3. One ALTS member began negotiations for a municipal franchise in 1995. The city in question demanded free fiber and a higher franchise than that of the ILEC. Additionally, the city wanted the CLEC to construct a free city network which did not coincide with the CLECs business or network plan. Negotiations lasted two years and the CLEC was forced to abandon the market in 1997. Negotiations covered thirty meetings which eventually included the CLECs President and outside counsel. Legal costs for the two years exceeded \$100,000. The CLEC went onto deploy service in two other cities in the State and seven additional cities throughout the country during the timeframe in question. In early 2000, the State government asked the CLEC why two cities in the State were built-out while the other was not. After listening to the situation, the State convinced the CLEC to return to the negotiating table in the middle of 2000. However, the situation had not changed and the city continued to demand concessions not required of the ILEC. The CLEC in question, should it receive non-discriminatory approval from the city, intends to deploy an advanced fiber-optic network.
4. In 1999, the FCC struck down a Minnesota agreement which gave exclusive access to the developer of the interstate highway rights-of-way for 10 years. In return, the developer would have constructed 1,900 miles of fiber-optic cabling throughout the State and provided the State with a portion of the capacity. The FCC noted that the State's action, effectively granting an exclusive license to the Developer, appear[ed] fundamentally inconsistent with the primary goal of [The Act], to replace exclusivity with competition." Such an agreement would have essentially barred access to highway rights-of-way by competitive carriers for a

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<sup>67</sup> Jeffrey A. Eisenach, Ph.D., 'Does Government Belong In the Telecom Business?,' *The Progress & Freedom Foundation*, (January 2001), <http://www.pff.org/POP%208.1%20GovtTelecom010400.pdf>

<sup>68</sup> John Moore, 'Will You Pay Internet Tolls?,' *ZDNet*, (September 27 1999), <http://www.zdnet.com/sp/stories/news/0,4538,2341710,00.html>

decade. CLECs would have been beholden to a carrier with monopoly control over State rights-of-way.<sup>69</sup>

5. In Tennessee, TCG, MCI and BellSouth complained that the franchise fees and compensation required of carriers violated The Act. The federal district court issued a decision, in which it held that the City of Chattanooga had no authority under state law to impose franchise fees, because such imposition was either a prohibited form of taxation or an unlawful rent not supported by the police power.<sup>70</sup>
6. In Michigan, TCG alleged that the City of Detroit had violated §253, among other ways, by failing to impose on Ameritech the same ordinance and franchise obligations that the City sought to impose on TCG. The court first, while rejecting the argument that exact parity was required in the terms of the franchises imposed on the ILEC and CLEC, held that §253 obligated the City to impose "comparable" franchise obligations on TCG and Ameritech.<sup>71</sup>

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<sup>69</sup> FCC, Memorandum Opinion & Order, *In the Matter of The Petition of the State of Minnesota for a Declaratory Ruling Regarding the Effect of §253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights-of-Way*, CC Docket 98-1, FCC 99-402, (20 December 1999), [http://www.fcc.gov/Bureaus/Common\\_Carrier/Orders/1999/fcc99402.txt](http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1999/fcc99402.txt)

<sup>70</sup> Paul Glist, Wesley R. Heppler & T. Scott Thompson, *Telecommunications Franchising*, (January 2001), Cole, Raywid & Braverman, LLP, p. 20.

<sup>71</sup> *Ibid*, p. 21.

## **David A. Wolcott**

*Director, Public Policy Research*

ALTS

David A. Wolcott is Director, Public Policy Research for the Association. In this capacity, Mr. Wolcott conducts industry research to support the CLEC industry on Capitol Hill, before the FCC and in the public policy arena.

Prior to joining ALTS, Mr. Wolcott was a consultant in the international telecommunications industry focusing on the deregulation of international telecom markets following the World Trade Organization's (WTO)<sup>72</sup> General Agreement on Telecommunications Services. Mr. Wolcott worked with a number of carriers to identify new markets and market entry strategies in the Americas, Asia and Europe. Mr. Wolcott also interacted with the various international policy bodies (e.g., ITU<sup>73</sup>, CITEL<sup>74</sup>, etc.) that oversee international telecommunications policy.

Prior to entering the telecommunications industry, Mr. Wolcott was employed in the educational field in the United Kingdom, Japan and Richmond, VA.

Mr. Wolcott holds a Master of Arts degree in International Trade Policy from George Mason University's (GMU) International Institute in Arlington, VA. He earned his Bachelor of Arts degree in International Affairs with a concentration in Economics from James Madison University (JMU) in Harrisonburg, VA.

## **Association for Local Telecommunications Services (ALTS)**

ALTS is the leading national industry association whose mission is to promote facilities-based local telecommunications competition. Created in 1987, ALTS is headquartered in Washington, DC and now represents more than 200 companies that build, own, and operate competitive networks – CLECs that are *facilities-based*. ALTS was founded to harness the shared energy and vitality of the new local competitors and to help ensure that the 1996 Telecom Act is fully implemented and enforced.

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<sup>72</sup> <http://www.wto.org/>

<sup>73</sup> <http://www.itu.org/>

<sup>74</sup> <http://www.citel.oas.org/>

## CERTIFICATE OF SERVICE

I, Glendora Williams, hereby certify that I have this 14th day of February, 2001, caused a copy of the foregoing Reply Comments of the Association for Local Telecommunications Services to be delivered by courier to the following:

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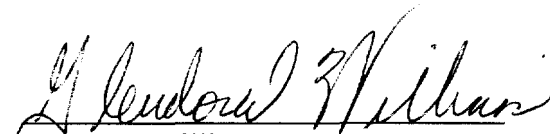
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